

1 HUB LAW OFFICES
Ford Greene, Esquire
2 California State Bar No. 107601
711 Sir Francis Drake Boulevard
3 San Anselmo, California 94960-1949
Telephone: (415) 258-0360

4 Attorney for Defendant
5 GERALD ARMSTRONG

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MARIN

10
11 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
12 not-for-profit religious)
corporation;)
13 Plaintiffs,)
14 vs.)
15 GERALD ARMSTRONG; DOES 1)
16 through 25, inclusive,)
17 Defendants.)
18 _____)

No. 152 229

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR
CONTINUANCE OF HEARING DATE ON
PLAINTIFF'S APPLICATION FOR
PRELIMINARY INJUNCTION

Date: February 27, 1992
Time: 3:30 p.m.
Calendar: L & M, Ex Parte
Hearing Judge: Dept. 5
Trial Judge: Not Assigned
Arbitration: Not Assigned

19 INTRODUCTION

20 On February 4, 1992, the Honorable Beverly B. Savitt ordered
21 Defendant GERALD ARMSTRONG to show cause why a certain settlement
22 agreement should not be enforced against him by means of a
23 preliminary injunction and set a hearing on the matter for 10:30
24 a.m. on March 6, 1992 in Department 5. Plaintiff's papers in
25 support of their application for preliminary injunction were not
26 served until February 7, 1992, when they were served by mail.
27 Greene Declaration, at ¶¶ 2, 3.
28

ORIGINAL

1 This ex parte application is for one continuance for a period
2 of thirty (30) days, or whatever period the Court determines to be
3 reasonable, in order to allow ARMSTRONG to meet plaintiff's
4 application for a preliminary injunction.

5 **STATEMENT OF FACTS**

6 The factual basis asserted in support of the application for
7 a preliminary injunction involves facts which span an eight year
8 period of time. The legal relief sought by plaintiff, if granted,
9 at minimum would result in a prior restraint of Defendant
10 ARMSTRONG's First Amendment right to freedom of speech as well as
11 prohibit him, in perpetuity, from engaging in gainful employment.
12 Additionally, were a preliminary injunction to issue the public's
13 right to know - to obtain information regarding the public issue
14 of the nature and practices of Scientology - would be adversely
15 affected, thus injuring the "marketplace of ideas" protected by
16 the First Amendment. Id. at ¶ 4.

17 Moreover, the agreement which plaintiff seeks the assistance
18 of this Court to enforce against ARMSTRONG contains a number of
19 provisions the net effect of which violate public policy as

20 (1) an obstruction of justice;

21 (2) a suppression of evidence of discreditable facts
22 pertaining to the Scientology organization; and

23 (3) an offer to dissuade participation in judicial
24 proceedings in violation of Penal Code section 138. Id. at ¶ 5.

25 Plaintiff has purchased the agreement and cooperation of
26 those who were Defendant ARMSTRONG's former counsel at the time he
27 executed the settlement agreement. Such attorneys are now
28 prevented from providing any information to ARMSTRONG in this case

1 regarding the circumstances of the execution of the settlement
2 agreement, by declaration or otherwise, unless said attorneys are
3 compelled by deposition subpoena to do so. ARMSTRONG has
4 requested plaintiff to release said attorneys from the strictures
5 of said agreement, but has not yet received any response from
6 plaintiff on this issue. Id. at ¶ 6.

7 Finally, ARMSTRONG was one of a number of individuals
8 knowledgeable of the illegal and criminal practices of plaintiff.
9 All said individuals have been silenced by a "global" or "block"
10 settlement agreement, of which ARMSTRONG is a single component. It
11 is this agreement that plaintiff seeks the Court's assistance in
12 enforcing against ARMSTRONG. Like ARMSTRONG's former attorneys,
13 such individuals have been silenced with respect to discussing the
14 circumstances wherein ARMSTRONG executed the settlement agreement,
15 unless compelled to do so by deposition subpoena. Id. at ¶ 7.

16 Plaintiff would not be prejudiced by any delay occasioned by
17 the grant of a reasonable continuance. Plaintiff complains that
18 the conduct of ARMSTRONG, which it would have this court enjoin,
19 commenced in June 1991. In light of the fact that plaintiff
20 waited until February 1992 to seek an injunction belies any claim
21 it may make that the granting of a continuance would prejudice it.
22 Were ARMSTRONG's conduct so prejudicial, plaintiff would not have
23 delayed eight (8) months in seeking injunctive relief.

24 Id. at ¶ 8.

25 For the foregoing reasons, as well as for other reasons,
26 defendant GERALD ARMSTRONG desires to exercise his statutory
27 entitlement to one continuance to enable him to meet plaintiff's
28 application for a preliminary injunction.

1 **ARGUMENT**

2 In pertinent part, Code of Civil Procedure section 527 (a)
3 states as follows:

4 An injunction may be granted at any time before
5 judgment on a verified complaint, or upon affidavits if
6 the complaint in one case, or the affidavits in the
7 other, show satisfactorily that sufficient grounds exist
8 therefor.

* * *

9 The defendant, however, shall be entitled, as of
10 course, to one continuance for a reasonable period, if
11 he or she desires it, to enable him or her to meet the
12 application for preliminary injunction. . . .

13 Section 527 has been interpreted not to be as absolute as it
14 literally reads. In circumstances, such as that which is before
15 the court now, where a temporary restraining order has not issued,
16 whether to grant a continuance is discretionary with the Court.
17 Although in cases wherein a temporary restraining order has not
18 issued, the responding party has no absolute right to a
19 continuance, Wutchumna Water Co. v. Superior Court (1932) 215 C.
20 734, 739, 12 P.2d 1033, 1035, the court, in an exercise of its
21 discretion may grant one for a reasonable period of time. Cohen
22 v. Herbert (1960) 186 Cal.App.2d 488, 493, 8 CR 922; Accord, 1
23 C.E.B. Civil Procedure Before Trial, Injunctions, § 1557.

24 ///
25 ///
26 ///
27 ///
28 ///

1 **CONCLUSION**

2 In light of the facts in this case pertaining to defendant
3 ARMSTRONG's need for a reasonable continuance, and the absence of
4 prejudice to plaintiff, as set forth above, and in light of the
5 fact that plaintiff delayed one week in filing its moving papers
6 after the point at which it obtained an Order to Show Cause issued
7 from Judge Savitt, defendant GERALD ARMSTRONG respectfully submits
8 that his ex parte application for a reasonable continuance should
9 be granted.

10 DATED: February 27, 1992

HUB LAW OFFICES

11
12 By: 

FORD GREENE

13 Attorney for Defendant
14 GERALD ARMSTRONG
15
16
17
18
19
20
21
22
23
24
25
26
27
28